JOHN J. MULLANEY
JOHN H. MULLANEY, P.E. (1994)
ALAN E. GEARING, P.E.
TIMOTHY Z. SAWYER

301 921-0115 Voice
301 590-9757 Fax
Mullaney@MullEngr.com

MULLANEY ENGINEERING, INC.
9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:	)	
	)	
In the matter of the Commission Rules	)	RM No. 10960
Regarding Modification of FM and AM	)	
Authorization	)	

To the Commission:

COMMENTS

Mullaney Engineering, Inc. ("MEI"), hereby submits its comments in response to the Public Notice released by the Commission on April 22, 2004 in RM No. 10960 ("RM"), which solicits comments concerning the petition for rule making filed by First Broadcasting. That petition suggests multiple changes to the Commission's Rules regarding the modification of FM and AM authorizations. MEI's comments relating to pertinent technical issues raised within the notice's paragraphs are provided herein.

With regard to the major modification of FM facilities and the creation of new FM allotments the present system is totally mired down. Given the diminishing resources within the Media Bureau it is imperative that this processed become streamlined and it needs **to be done now**. First and foremost the Bureau needs to implement electronic filing of rule making petitions to amend the FM Table of Allotments. Rule Making and Allotment data contained within the CDBS system is the area which contains the most data integrity problems. That is because 100% of this information must be **gathered by hand** from the bowels of the hundreds of petitions and counter proposals submitted each year and

then **entered by hand into CDBS**. We understand that a procedure for electronic filing is currently under development along with several other modernization improvements within the Bureau. However, electronic filing of RM data has a **statutory limitation** which has delayed implementation. We urge the Commission to change whatever is necessary in an expedited manner so as to permit electronic filing of RM documents as soon as possible.

We have reviewed the petition submitted by First Broadcasting and generally agree with most of there suggestions.

A. Permit a change of an FM station's community of license through a **minor modification** of facilities.

B. Permit changes in community of license **without need to be a first local service**. Current procedure encourages applicants to play a game by selecting any community no matter how small its population, simply to obtain a first local service preference.

C. Establish procedures to **"automatically" remove** impractical or un-applied for FM allotments. Currently, an individual must expend its resources on a case by case basis whereas an automatic process would be much more efficient. A possible automatic procedure is to delete a vacant allotment for which no one filed a 175 or a subsequent 301 during the first window it was made available.

D. Open a **one-time settlement** window to resolve backlog of pending FM rulemakings.

E. Permit a change of an **AM station's community of license** through a **minor modification** application. Currently such changes are only permitted during major change windows which recently have been four years apart. Such change of community applications should be MX with the station's authorized daytime facilities.

F. Streamline the process of downgrading a Class C station to **Class C0** status. While we can live with the changes suggested by First, we believe it **does not go far enough**. Any Class C station operating below the minimum HAAT of 451 meters should be **given a date by which** it needs to file a 301 application proposing minimum Class C HAAT. The current procedure **has not worked well,** delaying both RM petitions and minor change applications.

MEI would also like to make the following suggestions as possible improvements to the current process.

G. The current process of selecting a city strictly for a first service preference does not always serve the public interest. Each Class of station should have its own **minimum population** that must be met before a city can qualify as a community of license. If the proposed city of license has a population smaller than 25% (or some other percentage) of the total population within the 70 dBu and there exists a community which is more than 25% larger within that contour an evaluation should be conducted to determine if that other city should

be the community of license. Simply **pretending** that a new FM facility will serve its community of license which has a population of 200 persons when there exists a nearby city of 5,000 persons is not realistic and **does not serve** anyone's interests. Similarly, **new proposals for Class C0 or C** allotments should be required to serve a minimum number of persons. In cases where the petition fails the population test it can still qualify for the higher allotment **if it can demonstrate that terrain permits** implementation of maximum facilities with a tower height of less than 300 meters. It is unrealistic to assume that someone will build a 450 to 600 meter tower if the total population to be served is not large enough. This population & terrain test will help eliminate unrealistic Class C0 & C vacant allotments from preventing the creation of other new or upgraded allotments. If initially dropped in as a Class C1 the petitioner has the option of filing a one-step to the higher class at time of application.

H. Rulemakings proposing new and/or modified allotments should either be filed on a "**first come, first serve" (FCFS) basis or by a window** approach. To avoid several years between windows the Commission should adopt a predictable recurring criteria for the opening of such windows. A RM window could automatically open the second Monday of every month and remain open until mid-night of the following Sunday evening. Petitions filed during a window would not be available until one week after the close of that window. This will

eliminate counter proposals designed strictly to delay or to conveniently make themselves MX with a previously filed petition.

I. All RM petitions whether filed by an individual/business or by an attorney must **include the names and addresses** of the real parties in interest which seek the change (P.O. Boxes are unacceptable).

J. All petitions should be subject to a **filing fee**. Failure to have minimal filing fees has contributed to the **speculative** filing of over 12,000 FM translator applications and over 1,200 AM applications during the last two filing windows. Had even minimal fees been required substantially fewer applications would have been submitted. The **fees associated with "new" vacant allotments** should be relatively modest, such as those connected with requests for Special Temporary Authorities. Given that many RM require changes in other vacant allotments or facilities they also should result in **additional filing fees**. Filing fees for new allotments could be **applied to the 301** processing fee so as not to penalize the initial petitioner. If the allotment is not ultimately adopted then the **filing fee is returned**.

K. Over the past several years, **hundreds of petitions** for vacant allotments have been submitted by a relatively small group of individuals. Many of those allotments provide service to very small population centers and as such may never be built unless by the individual that filed the petition. We believe it is unrealistic to assume that one individual has the resources to build hundreds of questionable allotments and thus, they will only serve to prevent other

deserving allotments and overburden the staff. Each individual or group should be **limited to requesting no more than 12 "new" vacant** allotments during any 12 month period. During the height of the LPTV application filings the Commission limited the maximum number of applications that could be submitted by an individual or entity.

L. At present the **required separation** to or from vacant allotments includes the **0.5 km tolerance** permitted by rounding. Recently there was a petition for a new allotment which could only be granted using this 0.5 km tolerance to three separate stations in three separate directions. Had this RM petition been successful the allowable area which was properly spaced would have only existed for the **"exact"** coordinates of the allotment reference point. Had a perspective applicant moved just 1 second to the north, the south, the east or the west, that applicant would have **had to file under the short spacing rules (73.215)**. It should be understood that again because of rounding of coordinates a move of more than 12 meters or 40 feet from the original reference point would have resulted in a short spacing.

M. Under the current rules, all of the various categories of **Class C** facilities are restricted to **Zone II** while the various categories of **Class B** facilities are restricted to **Zones I & I-A**. We propose to continue to restrict Class B facilities to Zones I & I-A but to also permit the operation of the various **Class C facilities from all Zones**.

Over the years, we have seen many situations where a Class A station does not meet the minimum separation for Class B1 operation but it does meet the required separation to operate as a Class C3. However, because the proposed tower site would be located within Zone I or I-A it was prevented from obtaining such an upgrade. The **existing Class B** facilities can continue as is or they can request a "one-step" to become a C3 or C2 facility if they find such a change would provide them with more flexibility regarding their technical facilities.

N. Under the current rules, **an upgrade of "existing" facilities** is only permitted if there exists a **properly spaced reference point**. We believe existing facilities should be permitted to propose an upgrade to the next higher class **notwithstanding** the fact that no properly spaced reference point exists. Since this is limited to "upgrades" it is obvious that some class of allotment must already exists and, therefore, this avoids someone creating a **new substandard 3 kW** Class A facility.

O. Permit formal 301 FM applications to **modify the coordinates of a vacant** FM allotment (additional fee applies) without the need to file a formal rule making. Many existing facilities have been prevented from filing or were forced to utilize the contour protection portion of the rules because of a conflict with a vacant & un-applied for allotment. The ability to make minor modifications of existing allotments would avoid needless delays.

P. Presently, **city grade coverage** by a proposed allotment of its community of license is based upon a **reference circle**. However, except in very flat terrain, this is not an accurate representation of what is possible when the formal application is filed. Projection of city grade coverage for allotments should be based upon **actual terrain**. Recently, we prepared comments in an allotment proceeding involving two competing cities for one available channel. In that case, population served using allotment reference circles determined city A was preferred, but populations based upon actual terrain concluded city B was preferred (the exact opposite conclusion). New allotments **should not be** allowed to rely on supplemental showing such as Longley-Rice unless there is an actual break in line of sight.

Q. FM & TV applicants should be permitted to **demonstrate** compliance with city grade coverage using alternate predictions methods such as **Longley-Rice without a "delta-h" criteria being applied**. In instances where an applicant wishes to utilize a specific site for zoning or FAA reasons they have been forced to file a RM proposal to change its city of license. In many instances use of Longley-Rice would eliminate this unnecessary step.

R. AM & FM facilities are required to locate its **main studio** within a radius of 25 miles or within its city grade contour which ever is greater (if both stations are licensed to the same community it is the larger of the two). If the intent of the rule is to make the studio more accessible to members of the general public it's application here is

totally inconsistent. As a case in point, the following is presented using allotment reference circles with two separate towns. A Class A facility is permitted to locate its tower 16 km south of town and still place its studio another 16 km south of the tower for a total of 32 km from the city of license. Whereas a Class C facility is permitted to locate its tower 68 km south of town and still place its studio another 68 km south of the tower for a total of 136 km from the city of license. Hopefully, **no one really believes** that a member of the general public will find it acceptable to travel **over 100 km (60 miles) further** to visit the studio of a Class C facility **just because** it has a **larger coverage area**. Given the state of broadcasting in the 21st Century we believe a new rule is appropriate. A broadcast facility should be required to meet its obligation to be locally accessible by having **managerial level employee's** being physically located within the legal limits of its community of license **"x" number of days per month**. The location could be any readily accessible place such as the city library, city hall or the local fire department. Some of these visits should include a days on the weekend to maximize accessibility by members of the general public. Each station should record visits in the public file which should also be made available to the public during these community outings. This last suggestion does not directly impact the processing of new or modified allotments. However, we hope that the staff will consider issuing it as a separate NPRM.

Conclusion: MEI hopes the Commission will review all of the comments submitted and will expeditiously publish and process an NPRM to revise the necessary rules.

Respectfully submitted,

MULLANEY ENGINEERING, INC.

24 May 2004 By: /s/ John J. Mullaney

John J. Mullaney
Mullaney Engineering, Inc.
9049 Shady Grove Court
Gaithersburg, MD 20877
[301] 921-0115
Mullaney@MullEngr.com